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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 KELLY BOLDING, and MICHAEL  
10 MANFREDI, individually and on behalf of a class  
11 of all others similarly situated,

12 Plaintiffs,

13 v.

14 BANNER BANK, a Washington Corporation,

15 Defendant.

COMPLAINT – COLLECTIVE ACTION  
AND CLASS ACTION

**JURY TRIAL REQUESTED**

1 Kelly Bolding and Michael Manfredi, individually and on behalf of all others similarly  
2 situated (Plaintiffs), by and through their counsel, for their complaint against Defendant  
3 Banner Bank, hereby state and allege as follows:

4 **I. INTRODUCTION**

5 1. Defendant Banner Bank is a Washington state chartered commercial bank and a  
6 subsidiary of Banner Corporation, a \$9.7 billion bank holding company. According to its  
7 website, Defendant Banner Bank operates 190 full-service branches and 12 loan offices in 58  
8 counties in Washington, Oregon, Idaho, California, and Utah.

9 2. Kelly Bolding and Michael Manfredi bring this action individually and on  
10 behalf of a class of all others similarly situated (Plaintiffs), for declaratory judgment, equitable  
11 relief, and money damages for Defendant's failure to pay non-exempt Residential Lenders  
12 (Loan Officers) overtime wages in accordance with the law, where commissions earned were  
13 not included in the calculation of the regular rate of pay for determination of proper overtime  
14 wages; and for Defendant's failure to properly record and pay wages to employees for all hours  
15 worked, instituted to secure the protection of and to redress the deprivation and interference  
16 with rights secured through:

- 17 a. The Fair Labor Standards Act (FLSA), 29 U.S.C. §201, *et seq.*;
- 18 b. Washington wage statutes, including RCW 49.46 *et seq.*, RCW 49.48 *et*  
19 *seq.*, and RCW 49.52 *et seq.*;
- 20 c. California Labor Code § 510 *et seq.*, §204 *et seq.*, §226 *et seq.*, § 1174 *et*  
21 *seq.*, and §1194 *et seq.*, Cal. Code Regs., Title 8 §11040, Cal. Bus. &  
22 Prof. Code §17200, and Industrial Welfare Commission (IWC) Wage  
23 Order No. 4;
- 24 d. Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*, and Oregon  
25 Administrative Rules, 839-020 *et seq.*;
- 26

1 e. Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et seq.*, and Utah  
2 Administrative Code, Title R610 *et seq.*; and,

3 f. Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*,

4 3. Plaintiffs are current and former Loan Officers, Residential Lenders, and other  
5 mortgage loan officer employees, employed by Defendant in facilities in states across the  
6 country that have been subject to the company's unlawful compensation practices. This  
7 includes employees of institutions acquired by Defendant Banner Bank within the statutory  
8 periods, such as AmericanWest Bank, which was acquired in 2015. This lawsuit is brought as a  
9 collective action under the FLSA and as a class action under state law to recover unpaid wages  
10 owed to individual Plaintiffs and all other similarly situated employees.

## 11 II. JURISDICTION, VENUE, AND PARTIES

12 4. The FLSA authorizes court actions by private parties to recover damages for  
13 violation of the FLSA's wage and hour provisions. Jurisdiction over Plaintiffs' FLSA claims is  
14 based upon 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331, and 1337.

15 5. This Court has supplemental jurisdiction over Plaintiffs' claims for violations of  
16 the Washington wage statutes RCW 49.46 *et seq.*, RCW 49.48 *et seq.*, and RCW 49.52 *et seq.*,  
17 and the California Labor Code § 510 *et seq.*, §204 *et seq.*, §§226 and 1174, Cal. Code Regs.,  
18 Title 8 §11040, Cal. Bus. & Prof. Code §17200, and §1194 *et seq.*; Oregon Revised Statutes  
19 §652 *et seq.*, and §653 *et seq.*, and Oregon Administrative Rules, 839-020 *et seq.*; Utah Code  
20 Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et seq.*, and Utah Administrative Code, Title R610 *et*  
21 *seq.*; and, Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*, pursuant to 28 U.S.C. §1367, in  
22 that the state claims are so related to the FLSA claims that they form part of the same case or  
23 controversy.

24 6. At all relevant times, Defendant was an employer in an industry affecting  
25 commerce within the meaning of 29 U.S.C. §201 *et seq.*

7. Venue in this district is proper pursuant to 28 U.S.C. §1391(b) and (c), because Defendant does business in this district and a substantial part of the unlawful conduct giving rise to the claims occurred in this district.

### III. THE PARTIES

8. Plaintiff and class representative Kelly Bolding is a resident of Washington. Ms. Bolding worked as a mortgage loan officer with the title of Residential Lender for Defendant, and for Defendant Banner Bank's predecessor in interest AmericanWest Bank.

9. Plaintiff and class representative Michael Manfredi is a resident of California. Mr. Manfredi worked as a mortgage loan officer with the title of Residential Lender for Defendant and Defendant Banner Bank's predecessor in interest AmericanWest Bank.

10. Defendant Banner Bank is a Washington state chartered commercial bank and a subsidiary of Banner Corporation, headquartered in Washington. Banner Bank operates full-service branches and loan offices throughout Washington, Oregon, Idaho, California, and Utah.

11. The putative class includes all current and former Banner Bank loan officers, as well as loan officer employees of other banks merged with or acquired by Banner Bank during the relevant statutory period, such as AmericanWest Bank which was acquired in 2015.

#### IV. GENERAL COLLECTIVE AND CLASS FACTUAL ALLEGATIONS

12. Plaintiffs are Mortgage Loan Officers, Residential Lenders, and other similarly situated employees who work for Defendant and perform the typical job duties of mortgage loan officers.

13. Plaintiffs receive internal leads and contact potential customers, or receive contacts from customers generated by direct mail or other marketing activities, about loans and mortgages.

14. They collect required financial information from customers they contact or who contact them, including information about income, employment history, judgments, and liens. They also run credit reports.

1           15.     Plaintiffs use the collected financial information to identify which loan products  
2 may be offered to customers based on the financial information provided. They then assess the  
3 loan products identified and discuss with the customers the terms and conditions of particular  
4 loans, trying to match the customers' needs with one of Defendant's loan products.

5           16.     Plaintiffs also compile customer documents for forwarding to an underwriter or  
6 loan processor, and may finalize documents for closings.

7           17.     Defendant requires Plaintiffs to work "off-the-clock" for the benefit of  
8 Defendant without compensation, and fails to include earned commission wages in Plaintiffs'  
9 regular rate of pay for calculation of time-and-a-half overtime compensation.

10          18.     Defendant Banner Bank has implemented a policy and practice of requiring  
11 employees, including Plaintiffs, to work "off-the-clock."

12          19.     Employees are required to answer emails, phone calls, and otherwise  
13 communicate or meet with Defendant's customers in the mornings prior to arriving at work, in  
14 the evenings after leaving work, and on weekends.

15          20.     Employees are also required to conduct meetings with customers or potential  
16 customers over lunch, dinner or otherwise out of the office.

17          21.     Defendant's actions were willful. Defendant knew the job required more than  
18 40 hours per week but then discouraged accurately recording overtime.

19          22.     In addition, Defendant failed to properly pay overtime compensation to  
20 Plaintiffs.

21          23.     Plaintiffs are compensated with a base salary and earn commissions on the loans  
22 purchased by customers.

23          24.     Plaintiffs regularly work more than 40 hours per week, and when they do,  
24 Defendant pays them time-and-a-half compensation for overtime hours.

25          25.     However, Defendant calculates time-and-a-half overtime compensation using  
26 only Plaintiffs' base salary to determine their regular rate of pay.

1           26. Defendant does not include commission payments in the calculation of  
2 Plaintiffs regular rate in violation of 29 C.F.R. §778.117 and 29 C.F.R. §778.118 and state  
3 wage statutes, including Washington and California.

4           27. The net effect of this policy and practice is that Defendant intentionally and  
5 willfully fails to keep accurate time records, and intentionally and willfully fails to properly  
6 calculate and pay overtime compensation.

7           **V. COLLECTIVE AND CLASS ACTION ALLEGATIONS**

8           29. Kelly Bolding and Michael Manfredi bring their FLSA claim as an “opt-in”  
9 collective action pursuant to 29 U.S.C. §216(b), on behalf of themselves and as representatives  
10 of the following persons:

- 11           a. All current and former Mortgage Loan Officers, Residential Lenders,  
12 and all other similarly situated persons performing the typical duties of  
13 mortgage loan officers who performed work off-the-clock and were not  
14 compensated;
- 15           b. All current and former Mortgage Loan Officers, Residential Lenders,  
16 and all other similarly situated persons performing the typical duties of  
17 mortgage loan officers who were paid overtime wages where the regular  
rate of pay used to calculate overtime wages did not include wages  
earned in the form of commissions.

18           30. Kelly Bolding and Michael Manfredi additionally bring state law wage and hour  
19 claims under FRCP 23 as a class action, for alleged violations of:

- 20           a. The Washington State wage statutes, RCW 49.46 *et seq.* (the  
21 Washington Minimum Wage Act (MWA)), RCW 49.48 *et seq.*, and  
22 RCW 49.52 *et seq.*, on behalf of themselves and as representatives of the  
23 following subclasses of persons:
- 24           (1) All current and former Mortgage Loan Officers, Residential  
25 Lenders, and other similarly situated persons performing the  
26 typical duties of mortgage loan officers in Washington State,  
from three years from the filing of this lawsuit to the present,  
who performed work off-the-clock and were not compensated;

1 (2) All current and former Mortgage Loan Officers, Residential  
2 Lenders, and other similarly situated persons performing the  
3 typical duties of mortgage loan officers in Washington State,  
4 from three years from the filing of this lawsuit to the present,  
5 who were paid overtime wages where the regular rate of pay  
6 used to calculate overtime wages did not include wages earned in  
7 the form of commissions.

8 b. The California Labor Code § 510 *et seq.*, §204 *et seq.*, §§226, 1174, and  
9 1194, Cal. Code Regs., Title 8 §11040, Cal. Bus. & Prof. Code §17200,  
10 and IWC Wage Order No. 4; on behalf of themselves and as  
11 representatives of the following subclasses of persons:

12 (1) All current and former Mortgage Loan Officers, Residential  
13 Lenders, and other similarly situated persons performing the  
14 typical duties of mortgage loan officers in California, from four  
15 years from the filing of this lawsuit to the present, who  
16 performed work off-the-clock and were not compensated;

17 (2) All current and former Mortgage Loan Officers, Residential  
18 Lenders, and other similarly situated persons performing the  
19 typical duties of mortgage loan officers in California, from four  
20 years from the filing of this lawsuit to the present, who were paid  
21 overtime wages where the regular rate of pay used to calculate  
22 overtime wages did not include wages earned in the form of  
23 commissions.

24 c. The Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*, and Oregon  
25 Administrative Rules, 839-020 *et seq.*, on behalf of themselves and as  
26 representatives of the following subclasses of persons:

(1) All current and former Mortgage Loan Officers, Residential  
Lenders, and other similarly situated persons performing the  
typical duties of mortgage loan officers in Oregon, from six years  
from the filing of this lawsuit to the present, who performed  
work off-the-clock and were not compensated.

d. The Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et seq.*, and  
Utah Administrative Code, Title R610 *et seq.*, on behalf of themselves  
and as representatives of the following subclasses of persons:

(1) All current and former Mortgage Loan Officers, Residential Lenders, and other similarly situated persons performing the typical duties of mortgage loan officers in Utah, from two years from the filing of this lawsuit to the present, who performed work off-the-clock and were not compensated.

e. The Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*, on behalf of themselves and as representatives of the following subclasses of persons:

(1) All current and former Mortgage Loan Officers, Residential Lenders, and other similarly situated persons performing the typical duties of mortgage loan officers in Idaho, from two years from the filing of this lawsuit to the present, who performed work off-the-clock and were not compensated.

31. The FLSA claim may be pursued by those who opt-in to this action pursuant to 29 U.S.C. §216(b). The state law claims, if certified for class-wide treatment, may be pursued by all similarly-situated persons who do not opt-out of the state-specific subclasses.

32. Plaintiffs, individually and on behalf of other similarly situated employees, seek relief on a collective basis challenging, among other FLSA violations, Defendants' practice of failing to accurately record all hours worked and failing to pay employees for all hours worked, including failing to properly calculate and pay overtime compensation. The number and identity of other Plaintiffs yet to opt-in and consent to be party Plaintiffs may be determined from the records of Defendants, and potential class members may easily and quickly be notified of the pendency of this action.

33. Plaintiffs' state law claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements for class action certification pursuant to FRCP 23.

34. The class satisfies the numerosity standards. The class is believed to number in the hundreds, or possibly over a thousand people. As a result, joinder of all class members in a single action is impracticable.



1           35.     There are questions of law or fact common to the class, which predominate over  
2 any questions affecting only individual members. The questions of law or fact common to the  
3 class arising from Defendant's actions include without limitation:

- 4           a.     Whether Defendant failed to record and compensate employees for all  
5                 hours worked;
- 6           b.     Whether Defendant failed to properly calculate the regular rate of pay  
7                 for determination of overtime wages;
- 8           c.     Whether Defendant violated RCW 49.46 *et seq.*, 49.48 *et seq.*, and 49.52  
9                 *et seq.*, as to the Washington subclass;
- 10          d.     Whether Defendant violated the California Labor Code § 510 *et seq.*,  
11                 §204 *et seq.*, §§226, 1174, and 1194, Cal. Code Regs., Title 8 §11040,  
12                 Cal. Bus. & Prof. Code §17200, and IWC Wage Order No. 4, as to the  
13                 California subclass;
- 14          e.     Whether Defendant violated Oregon Revised Statutes §652 *et seq.*, and  
15                 §653 *et seq.*, and Oregon Administrative Rules, 839-020 *et seq.*, as to the  
16                 Oregon subclass;
- 17          f.     Whether Defendant violated Utah Code Annotated, §34-28 *et seq.*,  
18                 U.C.A. §34-40 *et seq.*, and Utah Administrative Code, Title R610 *et*  
19                 *seq.*, as to the Utah subclass;
- 20          g.     Whether Defendant violated Idaho Code §44-1501 *et seq.*, I.C. §45-601  
21                 *et seq.*, as to the Idaho subclass;
- 22          h.     Whether Defendant acted willfully to deprive Plaintiffs and Class  
23                 Members of earned and owed compensation and overtime;
- 24          i.     Whether Plaintiffs and Class Members have sustained damages, and the  
25                 proper measure of those damages.
- 26

1           36.     The questions set forth above predominate over any questions affecting only  
2 individual persons, any differences in damages calculations can easily be managed by the  
3 court, and a class action is superior with respect to considerations of consistency, economy,  
4 efficiency, fairness and equity, to other available methods for the fair and efficient adjudication  
5 of the state law claims.

6           37.     Ms. Bolding's and Mr. Manfredi's collective and class claims are typical of the  
7 class in that class members have been or are employed in the same or similar positions, and  
8 were subject to the same or similar unlawful practices.

9           38.     A class action is the appropriate method for the fair and efficient adjudication of  
10 this controversy. Defendant acted or refused to act on grounds generally applicable to the class.  
11 The presentation of separate actions by individual class members could create a risk of  
12 inconsistent and varying adjudications, establish incompatible standards of conduct for  
13 Defendant, and/or substantially impair or impede the ability of class members to protect their  
14 interests.

15           39.     Ms. Bolding and Mr. Manfredi are adequate representatives of the class because  
16 they are members of the class and their interests do not conflict with the interests of the  
17 members of the class they seek to represent. The interests of the members of the class will be  
18 fairly and adequately protected by Plaintiffs Bolding and Manfredi and their undersigned  
19 counsel, who have extensive experience prosecuting complex wage and hour, employment and  
20 class action litigation.

21           40.     Maintenance of this action as a class action is a fair and efficient method for the  
22 adjudication of this controversy. It would be impracticable and undesirable for each member of  
23 the class who suffered harm to bring a separate action. In addition, the maintenance of separate  
24 actions would place a substantial and unnecessary burden on the courts and could result in  
25 inconsistent adjudications, while a single class action can determine, with judicial economy,  
26 the rights of all class members.

1                   **COUNT I – VIOLATION OF THE FAIR LABOR STANDARDS ACT OF 1938**

2           41.     At all times material herein, Plaintiffs have been entitled to the rights,  
3           protections and benefits provided under the FLSA, 29 U.S.C. §201 *et seq.*

4           42.     The FLSA regulates, among other things, the payment of overtime pay by  
5           employers whose employees are engaged in commerce, or engaged in the production of goods  
6           for commerce, or employed in an enterprise engaged in commerce or in the production of  
7           goods for commerce. 29 U.S.C. § 207(a)(1).

8           43.     Defendant was, and is, subject to the overtime pay requirements of the FLSA  
9           because it is an enterprise engaged in commerce and its employees are engaged in commerce.

10          44.     Defendant violated the FLSA, 29 U.S.C. §201 *et seq.*, by failing to compensate  
11          employees for all hours worked in compliance with 29 C.F.R. §785 (Hours Worked).

12          45.     Defendant violated the FLSA, 29 U.S.C. §201 *et seq.*, by failing to properly  
13          calculate overtime in compliance with 29 C.F.R. §778 (Overtime Compensation).

14          46.     Defendant also violated the FLSA, 29 U.S.C. §201 *et seq.*, when it willfully  
15          failed to keep accurate records of all hours worked by employees in compliance with 29 C.F.R.  
16          §516 (Records To Be Kept By Employers).

17          47.     Plaintiffs are non-exempt workers and must be paid overtime in compliance  
18          with FLSA regulations, and U.S. Department of Labor, Wage and Hour Division,  
19          Administrator's interpretation No. 2010-1 (March 24, 2010).

20          48.     Ms. Bolding, Mr. Manfredi, and all similarly situated current and former  
21          employees are subject to a uniform and company-wide compensation policy. This policy, in  
22          violation of the FLSA, has been and continues to be applied to all such employees.

23          49.     Plaintiffs and all similarly situated employees are entitled to damages equal to  
24          the mandated overtime pay within the three years preceding the filing of this Complaint, plus  
25          periods of equitable tolling, because Defendant acted willfully and intentionally and knew or  
26          showed reckless disregard for the matter of whether their conduct was prohibited by the FLSA.

1           50. Defendant has not acted in good faith nor with reasonable grounds to believe its  
2 actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiffs and  
3 other similarly situated employees are entitled to recover an award of liquidated damages in an  
4 amount equal to the amount of unpaid wages and overtime pay described above, pursuant to  
5 Section 16(b) of the FLSA, 29 U.S.C. § 216(b). Alternatively, Plaintiffs and all similarly  
6 situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

7           51. As a result of the aforesaid willful violations of the FLSA's overtime  
8 provisions, overtime compensation has been unlawfully withheld by Defendant from Plaintiffs  
9 for which Defendant is liable pursuant to 29 U.S.C. § 216(b), together with an additional equal  
10 amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys'  
11 fees and costs of this action.

12                   **COUNT II – CLASS-WIDE VIOLATION OF WASHINGTON WAGE**  
13                   **STATUTES**

14           52. Defendant violated the Washington wage statutes, RCW 49.46 *et seq.*, 49.48 *et*  
15 *seq.*, and 49.52 *et seq.*, in relevant part by failing to pay all wages due to Plaintiffs, including  
16 for off-the-clock work and overtime pay properly calculated using commission wages to  
17 determine the regular rate of pay.

18           53. Defendant knowingly and intentionally withheld, and continue to withhold,  
19 Plaintiffs' wages in violation of the aforementioned statutes.

20           54. Plaintiffs were thereby damaged in an amount to be determined at trial.

21                   **COUNT III – CLASS-WIDE VIOLATION OF THE CALIFORNIA LABOR**  
22                   **CODE AND CALIFORNIA UNFAIR COMPETITION LAW**

23           55. Defendant violated the California Labor Code § 510 *et seq.*, §204 *et seq.*,  
24 §§226, 1174, and 1194, Cal. Code Regs., Title 8 §11040, Cal. Bus. & Prof. Code §17200, and  
25 IWC Wage Order No. 4, by failing to pay all wages due to Plaintiffs, including for off-the-

1 clock work and overtime pay properly calculated using commission wages to determine the  
2 regular rate of pay.

3 56. As alleged above, throughout the Class Period, Plaintiffs and Class Members  
4 were required to work more than eight hours per day. Plaintiffs and Class Members regularly  
5 worked more than 40 hours per week, including time worked off the clock, and often worked  
6 as much as 50 or more hours a week. Defendants, however, regularly did not pay Plaintiffs or  
7 Class Members overtime compensation for the hours they worked over eight hours in a day and  
8 40 hours a week.

9 57. At all times herein relevant, California Labor Code § 510 and California Code  
10 of Regulations Title 8 § 11040 applied to Plaintiffs' work with Defendants and continue to  
11 apply to Class Members' employment with Defendants. California Labor Code § 510 and  
12 California Code of Regulations Title 8, § 11040 states that "employers must pay one and a half  
13 times an employee's 'regular rate' if he or she works more than 40 hours per week or more than  
14 eight hours per day." Cal. Labor Code § 510(a).

15 58. California Labor Code § 204 establishes the fundamental right of all employees  
16 in the State of California to be paid wages in a timely fashion for their work.

17 59. Pursuant to IWC Wage Order No. 4, Defendant is required to pay Plaintiffs and  
18 other members of the class for all hours worked, meaning the time during which an employee  
19 is subject to the control of the employer.

20 60. Defendant's uniform policy and procedures requires its employees to work off  
21 the clock without compensation for time spent working for Defendant and/or subject to the  
22 control of the Defendant. Plaintiffs seek unpaid wages and penalties therefore.

23 61. California Labor Code § 226(a) provides that, at the time of each payment of  
24 wages, an employer shall provide each employee with a wage statement itemizing, among  
25 other things, the total hours worked by the employee in the pay period and the correct amount  
26 to be paid for each hour worked.

1           62. California Labor Code § 226(e) provides that an employee suffering injury as a  
2 result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a)  
3 is entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial  
4 pay period in which a violation occurs and \$100 per employee for each violation in a  
5 subsequent pay period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

6           63. Defendants knowingly and intentionally failed to provide timely, accurate,  
7 itemized wage statements to Plaintiffs and Class Members in accordance with Labor Code  
8 §226. The statements provided to Plaintiffs and Class Members have not accurately reflected  
9 actual gross wages earned, and the total hours worked by employees. Plaintiffs and the Class  
10 are therefore entitled to the damages and penalties provided for under Labor Code § 226(e).

11           64. Plaintiffs further bring this cause of action on behalf of the proposed Class,  
12 seeking statutory relief to stop the misconduct of Defendants, as complained herein, and to  
13 compel restitution and disgorgement of all profits obtained by Defendants through the unfair  
14 and unlawful business practices described herein.

15           65. The conduct of Defendants, as alleged herein, constitutes unlawful practices as  
16 set forth in California Business & Professions Code §§ 17200, *et seq.* Specifically, Defendants  
17 conduct business activities while failing to comply with California wage and hour laws and the  
18 California common and statutory law as described herein—including the failure to pay  
19 overtime, and pay for all hours worked.

20           66. Section 17200 of the California Business & Professions Code prohibits unfair  
21 competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

22           67. Defendants' failure to adopt policies in accordance with and/or adhere to these  
23 laws, all of which are binding upon and burdensome to Defendants' competitors, engenders an  
24 unfair competitive advantage for Defendants, thereby constituting an unfair business practice,  
25 as set forth in California Business & Professions Code §§ 17200, *et seq.*  
26

1           68. Defendants' conduct as herein alleged has damaged Plaintiffs and members of  
2 the proposed Class by wrongfully denying them earned wages, overtime pay, and meal breaks  
3 and therefore was substantially injurious to Plaintiffs and the Class.

4           69. Under the circumstances alleged, it would be inequitable and result in a  
5 miscarriage of justice for Defendants to continue to retain the property of Plaintiffs and the  
6 members of the Class, entitling Plaintiffs and the proposed Class to restitution of the unfair  
7 benefits obtained and disgorgement of Defendants' ill-gotten gains.

8           70. As a result of Defendants' unlawful and unfair business practices, Plaintiffs and  
9 members of the proposed Class are entitled to and seek restitution and disgorgement, and other  
10 appropriate relief available under Cal. Bus. & Prof. Code §§ 17200 *et seq.*

11           71. While the statute of limitations for Plaintiffs' overtime claims is three years,  
12 pursuant to California Business & Professions Code § 17208, the statute of limitations is  
13 effectively four years because Plaintiffs have brought claims under the California Unfair  
14 Competition Law.

15           72. Defendant knowingly and intentionally withheld, and continue to withhold,  
16 Plaintiff's wages in violation of the aforementioned statutes.

17           73. Plaintiffs were thereby damages in an amount to be determined at trial.

18           **COUNT IV – CLASS-WIDE VIOLATION OF OREGON WAGE STATUTES**

19           74. Defendant violated the Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*,  
20 and Oregon Administrative Rules, 839-020 *et seq.*, in relevant part by failing to pay all wages  
21 due to Plaintiffs, including for off-the-clock.

22           75. Defendant knowingly and intentionally withheld, and continue to withhold,  
23 Plaintiffs' wages in violation of the aforementioned statutes.

24           76. Plaintiffs were thereby damaged in an amount to be determined at trial.

25           **COUNT V – CLASS-WIDE VIOLATION OF UTAH WAGE STATUTES**

1           77. Defendant violated the Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et*  
2 *seq.*, and Utah Administrative Code, Title R610 *et seq.*, in relevant part by failing to pay all  
3 wages due to Plaintiffs, including for off-the-clock.

4           78. Defendant knowingly and intentionally withheld, and continue to withhold,  
5 Plaintiffs' wages in violation of the aforementioned statutes.

6           79. Plaintiffs were thereby damaged in an amount to be determined at trial.

7           **COUNT VI – CLASS-WIDE VIOLATION OF IDAHO WAGE STATUTES**

8           80. Defendant violated the Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*, in  
9 relevant part by failing to pay all wages due to Plaintiffs, including for off-the-clock.

10           81. Defendant knowingly and intentionally withheld, and continue to withhold,  
11 Plaintiffs' wages in violation of the aforementioned statutes.

12           82. Plaintiffs were thereby damaged in an amount to be determined at trial.

13           **VI. RESERVATION OF RIGHTS**

14           83. Plaintiffs and Class Members reserve the right to amend these claims for relief,  
15 including for claims of retaliation for assertion of these rights under applicable state and  
16 federal laws.

17           84. Under FRCP 2 and 8, Plaintiffs and the Class Members are not required to plead  
18 every legal theory supporting claims for relief, and through the discovery process expect to  
19 uncover additional evidence of unlawful employment practices. Thus, this short and plain  
20 statement of claims under Rule 8 is not exhaustive of the fact and legal theories that will be  
21 presented at trial.

22           **VII. PRAYER FOR RELIEF**

23           Wherefore, Plaintiffs respectfully request that this Court:

24           A. Grant a permanent injunction enjoining Defendant, its officers, successors,  
25 agents, assigns, and all persons in active concert or participation with them, from engaging in  
26



any other employment practice which deprives employees of their wages or violates the law or public policy;

B. Order Defendant to institute and carry out policies, practices, and programs which eradicate the effects of their past and present unlawful employment practices;

C. Order Defendant to make Plaintiffs and Class Members whole for the wrongful withholding of wages by providing relief, including awarding exemplary, double, or treble damages, under:

- a. The Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*;
- b. RCW 49.46 *et seq.*, 49.48 *et seq.*, and RCW 49.52 *et seq.*;
- c. California Labor Code § 510 *et seq.*, §204 *et seq.*, §§226, 1174, and 1194, Cal. Code Regs., Title 8 §11040, Cal. Bus. & Prof. Code §17200, and IWC Wage Order No. 4;
- d. Oregon Revised Statutes §652 *et seq.*, and §653 *et seq.*, and Oregon Administrative Rules, 839-020 *et seq.*,
- e. Utah Code Annotated, §34-28 *et seq.*, U.C.A. §34-40 *et seq.*, and Utah Administrative Code, Title R610 *et seq.*;
- f. Idaho Code §44-1501 *et seq.*, I.C. §45-601 *et seq.*; or,
- g. Any other applicable statute.

D. Order Defendant to make Plaintiffs and Class Members whole by taking all other affirmative relief necessary to eradicate the effects of their unlawful employment practices;

E. Order Defendant to pay punitive, double, exemplary, and/or liquidated damages to the fullest extent allowed by law;

F. Award Plaintiffs and Class Members the costs of this action, including attorneys' fees, expert fees, and all other costs to the fullest extent allowed by law;

G. Order Defendant to pay for any and all tax ramifications arising from Plaintiffs' and Class Members' recovery of damages and/or attorney's fees;

H. Award pre-judgment interest and post-judgment interest; and

I. Grant any additional or further relief as provided by law, which this Court finds appropriate, equitable, or just.

## VIII. DEMAND FOR JURY TRIAL

All Plaintiffs hereby request trial by jury of all issues triable by jury.

DATED this 17th day of April, 2017.

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